Filed 12/2/20 In re T.W. CA1/4

NOT TO BE PUBLISHED IN OFFICIAL REPORTS

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FIRST APPELLATE DISTRICT

DIVISION FOUR

In re T.W. et al., Persons Coming Under the Juvenile Court Law.	
SAN FRANCISCO HUMAN SERVICES AGENCY, Plaintiff and Respondent, v. T.R., Defendant and Appellant.	A159506 (City & County of San Francisco Super. Ct. No. DJ-193237)

T.R. (Mother) appeals jurisdictional and dispositional orders of the juvenile court declaring her children, T.W. (Daughter) and T.W. (Son) (collectively, Minors) dependents and removing them from her custody. Mother argues the evidence does not support the juvenile court's orders, that the written findings and orders conflict with the court's oral findings, that the requirements of the Indian Child Welfare Act of 1978 (ICWA) (25 U.S.C. § 1901 et seq; Welf. & Inst Code., § 224 et seq.) were not satisfied, that the court unlawfully delegated its authority regarding visitation, and, as to Son, that the trial court disregarded the dual status requirements section 241.1 of

Welfare and Institutions Code.[1] We shall remand the matter for ICWA compliance and direct the juvenile court to correct two clerical errors. In all other respects, we shall affirm.

FACTUAL AND PROCEDURAL BACKGROUND

The San Francisco Human Services Agency (the Agency) filed a petition on behalf of Minors on September 13, 2019. At the time, Daughter was 17 years old and Son was 16 years old. As to Son, the petition alleged he had suffered, or was at risk of suffering, serious physical harm (§ 300, subd. (a)) and serious emotional damage (*id.*, subd. (c)). As to both Minors, the petition alleged failure to protect (*id.*, subd. (b)) and no provision for support (*id.*, subd. (g)).[2]

Detention

According to the detention report, a social worker spoke with Son and Daughter in August 2019, a few weeks after Son moved into the home of his maternal aunt (Aunt). Minors reported that sometimes there was no food in Mother's house; according to Son, when he confronted Mother about the lack of food, Mother would reply, " 'I'll get it when I get it.' " They said they could go to Aunt's house for a meal, and that they had stolen food due to hunger. Son said Mother yelled and " 'cuss[ed]' " at him and his siblings, and both children said Mother would call them " 'bitches.' " They said there was no furniture in the household and no one had a mattress to sleep on. Son said he felt safe in Mother's household but he did not feel wanted.

---

[1] All undesignated statutory references are to the Welfare and Institutions Code.

[2] Minors' father (Father) was incarcerated, and he is not a party to this appeal.

Mother told the social worker she had acquired housing in November 2018 after being homeless for more than six years. She said Son had become increasingly disrespectful, "physical," and aggressive, and that she was not willing to have him return home without support and intervention. She described an incident in which Son took her phone, after which she, Son, and Daughter argued in the kitchen, and Son began to get "physical" with Daughter. Mother had to restrain Son to stop him from hitting Daughter; she pushed him against a wall, which caved in slightly from the impact.

Mother also described an incident that led to Son being placed on juvenile probation.[3] Mother and Daughter had an argument, and Mother tried to take Daughter's phone as punishment. Son was "triggered" and he began to yell at Mother. She went down the stairs and outside to calm down, and when she returned, Son was still yelling at the top of the stairs. He made an obscene comment to her, she responded with something that upset Son, and he ran down the stairs. Her older son (Brother) was home and tried to get in Son's way; Son then ran around the kitchen and "charged" at her. Mother pinned Son against the wall and told him to calm down, and Son pulled a gun out of his pocket and threatened to shoot both Mother and Brother. Son continued to yell at Mother and threaten her, and she told him " 'bust,' " meaning that if he was going to shoot her, he should just do it. Son walked out of the house, Mother waved down a security guard, and Son ran to hide the weapon, which turned out to be a BB gun.

Mother reported that another incident took place while Son was on probation. Son took her EBT card, said he was going to get food, and walked upstairs. Mother followed him to retrieve her card, and they engaged in a physical altercation, during which Son tried to throw Mother over the top of

[3] The record indicates Minor's probation was informal.

the stairs. She held onto Son, and they both went into the wall, causing it to cave in slightly. After that incident, Mother realized it was not safe for Son to remain in her care, and he went to Aunt's home.

The next day, Mother and Son attended a probation meeting, at which Mother became upset and walked out. She disagreed with the Agency's decision to place Son with Aunt because in the past he had been " 'put out' " of Aunt's home without Mother's knowledge.

When the social worker visited Mother's home, Mother showed him repairs that had been done to the walls. She also said Son had punched holes in the doors of the upstairs room, and the social worker saw a fist-size hole in each of the bedroom doors. With the exception of a metal bed frame in Son's room, there was no furniture and no mattresses in the home. Mother said a charitable agency was supposed to help her furnish the home, but they had never helped her. She also said she had been battling a case of welfare fraud that had prevented her from receiving aid for several months. She said there was always food in the home, and she showed the social worker food in the refrigerator and dry goods in the cabinets. The children would sometimes come home with the " 'munchies' " after smoking marijuana and want to eat cereal and noodles instead of the food in the house.

Mother told the social worker she had called the Agency and asked for a voluntary case to be opened, but she received no response. She thought that Son's behavior made the home unsafe for everyone there, and she was open to working with community organizations and the Agency to get the support needed to provide a safe home environment. Since the incident with the BB gun, Mother had received "Seneca" services and attended weekly therapy. She did not think Son had been participating in services or that probation had offered helpful services to him.

Son confirmed that he and Mother had been involved in three physical altercations during 2019, although his account of the incidents differed from Mother's in certain details. In the first incident, Daughter threw noodles at him. The second began as a dispute about money: Son wanted $20, Mother refused to give it to him, and Son asked Daughter for the money. Daughter told him she had just given Mother $90 for rent, then told him to take Mother's iPhone and bring it to her, promising she would give him the money if he did so. Son took the phone and was confronted by Mother and Brother, who held him by either side to search his person and recovered the phone. Son went downstairs, searched Mother's belongings unsuccessfully for money, and picked up some pictures that belonged to Brother. Brother demanded them back, and a physical struggle ensued, during which Brother pinned Son to the wall and held his arm against Son's throat. Mother was next to Brother and said either, " 'that's what you get for being disrespectful,' " or " 'you disrespectful little B.' " Son took out a BB gun and threatened Brother with it. Mother called the authorities; Son's probation was a result of this incident.

The final incident began when Son asked Mother to get food or give him money. When she told him there was food in the house, he took her EBT card. She tried to get it back, and they engaged in a struggle, during which she pushed him down the stairs, climbed on top of him, and held her arm to his throat while searching for the card. He shoved her off because he could not breathe, and she went into the wall on the stairs, causing it to cave in. Daughter gave Son money for food, and he returned the EBT card.

After this incident, Son was placed with Aunt. He said she had once told him to go back to Mother's home because he was disobeying her rules

and breaking curfew, but he said he knew the rules and intended to follow them.

Son said he did not feel unsafe in Mother's house unless Brother was home; Brother used drugs in the bathroom and Son believed he had unaddressed mental health problems. Mother allowed Brother to sleep in the home and use drugs there. But Son said he did not feel wanted in the home, because Mother yelled at him, " 'cuss[ed]' at him," and called him " 'bitch' " rather than using his name. He reported Mother spent her money on marijuana and alcohol, and that she used marijuana daily.

Minor's probation officer reported that during a child and family team meeting (CFT) (see § 16501, subd. (a)(5)) on July 16, 2019, Mother became "explosive" and left the meeting, saying she would not let Son return home and that the " 'state could have his black ass.' " She saw Mother yell at Son and abuse him verbally. She thought Mother had mental health issues, and that her explosiveness was "triggering" to Son. At a home visit, she saw that there was food in the house, but not food that a child could easily prepare.

Daughter called the social worker on September 5, 2019, saying Mother refused to let her out of the bathroom unless Daughter handed over her paycheck. Daughter said Mother threatened to fight if Daughter did not listen to her. While they were on the phone, the social worker heard Daughter tell Mother the check did not have Mother's name on it and asked why she needed it; Mother said, " 'I don't give a fuck,' " and continued to argue with Daughter before the call ended. When the social worker called Daughter back, Daughter said she had been allowed to leave the house and that she did not feel it was unsafe to return home.

Son was ordered detained on September 16, 2019 and placed with Aunt. Daughter remained with Mother until September 30, 2019, when

Mother asked her to leave the family home because she believed—falsely, according to Daughter—that Daughter was engaging in sexual activity. It appeared Mother and Daughter had argued over Mother's request that Daughter take out her trash can, which was emitting an odor. Daughter went to the home of Aunt, who said she had cared for Minors off and on over the past six years, and that her only concern about caring for Daughter was that Daughter did not always return home at a decent hour. Mother told a social worker Daughter wanted to come and go as she pleased, she had not been attending school, she was smoking marijuana, and she threw her clothes down the stairs, sprayed lotion on the walls, and cursed at Mother. Mother said she realized Daughter had to leave if Mother was to avoid getting "physical" with her. Mother agreed to attend a CFT meeting on October 1, 2019, but she failed to appear.

At the October 7, 2019 detention hearing as to Daughter, Mother testified that she did not ask Daughter to leave on September 30, 2019; rather, she gave Daughter the choice of either following house rules (such as doing chores, not smoking marijuana in the house, not coming home late, and going to school) or being removed. Daughter chose to leave because she was angry about a dispute over taking out her trash and Mother's suspicion that she was involved in sexual activity.

Mother testified she was involved in physical altercations with Son in self-defense, and that Daughter had been involved in those altercations.

The juvenile court ordered Daughter detained and approved her placement with Aunt.

Jurisdiction/Disposition

On October 25, 2019, in advance of the jurisdiction and disposition hearing, the Agency reported that Son, who was on informal juvenile

probation, had recently left Aunt's house and gone to Mother's house, and Mother did not notify the Agency about his move. Son was placed in an emergency home. Instead of going to school the next day, he went back to Aunt's home, stole her MacBook, and ran out of the house.

Daughter was refusing to come to the Agency's office and had not been attending school. Mother had expressed concern that Daughter was "exploiting herself," although Daughter emphatically denied this. At the time of the report, Daughter was AWOL.

Mother walked out of a Placement CFT meeting on October 22, 2019, when Aunt was asked to discuss some of the issues involved with caring for Son and Daughter. Mother cursed at Aunt and called Aunt and social worker liars. When she returned to the meeting, she continued the same behavior. Mother had made threatening phone calls and sent crude text messages to Aunt. The social worker's investigation revealed that Mother had had approximately 20 child welfare referrals in the past, for allegations of sexual abuse, physical abuse, emotional abuse, caretaker absence/incapacity, and general neglect, although no case had ever been opened.

Brother had a history of sexually inappropriate behavior with his sister, as well as significant mental health issues, but Mother allowed him to come into the home and " 'discipline' " his siblings.

The Agency reported on November 26, 2019, that Son was in an emergency placement that was "not a good fit" for him. He remained on informal probation. Although Daughter was a very sweet girl, she had been exhibiting defiant behaviors, including staying out late, and she had been missing school. She was gone from Aunt's home for three nights without permission, and returned under the influence of marijuana. Daughter said she " 'boost[ed],' " or stole things to pay for her cell phone and phone bill.

Daughter reported that Mother had said she did not want her to return home, and Son said he did not want to be home with Mother.

Mother had called the social worker and left a voicemail saying the Agency did not know where the children were, but she refused to speak with the social worker at a court hearing; the Agency saw her statements as a means of aggression, because Mother wanted the Agency to know the children had been going to her home. Mother had been going to the Agency's office unannounced. Mother had gone to Daughter's school and requested a meeting; when a meeting that included the social worker was arranged, Mother cancelled it. Mother had been referred to services for anger management, individual therapy, substance abuse assessment, and parenting, all of which she declined.

On January 2, 2020, the Agency reported that Son had been adamant that he did not wish to return home to Mother, although he wanted to visit with her. However, after a private conversation with Mother on December 9, 2019, Son said he wanted to go home and he did not want Mother to feel " 'abandoned.' "

Daughter had left her placement without permission several times. She continued to " 'boost' " items from stores, placing her at risk of prosecution as an adult when she turned 18 in January 2020. The Agency reported that Daughter was always in "survival mode." Daughter had recently bought a cell phone for Son and they stayed in contact, although they were placed in different cities.

Mother had declined visits with Minors, and she was declining all services the Agency offered.

A contested jurisdiction and disposition hearing took place on January 15, 2020. The social worker on the case testified that she had concluded

Mother had a problem with substance abuse, based on her own admission that she smoked marijuana and on Minors' reports that she smoke marijuana and drank alcohol every day, and there was no evidence Mother had addressed this issue. In the social worker's opinion, Mother's substance abuse prevented Minors from returning home at that time. There was also evidence Mother had an anger management issue, which made it unsafe for Minors to return home. This problem manifested itself in Mother's anger and abrasiveness toward the social worker, juvenile hall, and service providers, about which the social worker had received "a myriad of phone calls." The social worker also believed Mother had mental health problems that she was not addressing. Mother had indicated she had suffered from a mental health issue in the past, and the social worker found her behavior—such as making unfounded accusations and suggesting Daughter was being trafficked but refusing to give any more details—"really concerning."

The social worker met with Mother once and offered Mother services to address these issues, but Mother did not accept the referrals. Mother refused to meet with the social worker again. Mother told Daughter she did not want her back in the home, and the social worker was of the opinion that it was not physically or emotionally safe for Minors to return home unless the entire family, including Mother, received services.

The social worker described both Son and Daughter as "very mannerable kids." Son was doing well in his placement and was attending school.

Mother testified that she did not ask for services from the social worker because she was already receiving services, including mental health and anger management, through multiple agencies. She did not tell the social worker she was receiving these services. Mother testified she used

marijuana for a medical condition, not for recreational purposes. She was receiving mental health services for "[f]amily issues," such as dealing with her older son, who had mental health problems, and coping with depression she had experienced during six years of homelessness. She denied that she had an anger management problem, but said, "But I do get highly teed off depending on the subject matter, and I am very voiceterous [*sic*] about it."

The juvenile court found true the allegations that Mother's ability to care for Minors was impeded by anger management issues and that she was unwilling to provide care for Daughter (§ 300, subd. (b); the B2 and B3 allegations, respectively), that Son was suffering from serious emotional damage (*id*., subd. (c); the C1 allegation), and that Father was incarcerated and unable to arrange for care of Minors (*id*, subd. (g); the G1 allegation). The court struck allegations that Son had suffered or was at risk of suffering serious physical harm inflicted non-accidentally by a parent or guardian (*id*., subd. (a); the A1 allegation) and that Mother's substance abuse impaired her ability to care for minors (*id*., subd. (b); the (B1 allegation)). The court declared dependency, continued Minors in out-of-home care, finding return would create a substantial risk of detriment to their safety, protection, and emotional or physical well-being and danger to their physical health, and ordered reunification services.

DISCUSSION

I. Dual Status

Mother contends the jurisdictional and dispositional orders as to Son should be reversed because the mandatory dual status requirements of section 241.1 were not satisfied.

Section 241.1 is applicable where a child may be subject to the juvenile court's jurisdiction both as a dependent (§ 300) and as a ward (§§ 601, 602).

In that case, "the child protective agency and the probation department must jointly 'initially determine which status will serve the best interests of the minor and the protection of society.' (§ 241.1, subd. (a).) Both agencies present their recommendations to the juvenile court, which then must determine the appropriate status for the child. (*Ibid.*) Dual jurisdiction is generally forbidden; a minor may not be both a dependent child and a delinquent ward of the court absent a written protocol agreed upon by the presiding judge of the juvenile court, the child protective agency, and the probation department." (*D.M. v. Superior Court* (2009) 173 Cal.App.4th 1117, 1123 (*D.M.*).)

The record does not indicate that the Department and the probation department developed a written protocol for Son, and the juvenile court made no findings on whether Son should be treated as a dependent or as a ward of the juvenile court. Mother urges us therefore to reverse the court's orders as to Son.

We reject this contention. Neither Mother nor anyone else raised the issue before the juvenile court, and therefore it is forfeited. "[C]ourts have repeatedly held that a party's failure to object forfeits appellate review of the adequacy of—or the failure to prepare—mandatory assessment reports in juvenile proceedings." (*In re M.V.* (2014) 225 Cal.App.4th 1495, 1508 [challenge to lateness of § 241.1 report forfeited].)

Even if the issue were not forfeited, we are not persuaded a section 241.1 report was required. There is no indication the juvenile court adjudged, or intended to adjudge, Son a ward of the court pursuant to section 601 or 602. Rather than doing so, it placed him on informal probation. Informal probation is authorized by section 725, which allows a court to place a minor who is described by section 601 or 602 on probation without

adjudging the minor a ward of the court. (§ 725, subd. (a); see *D.M.*, *supra*, 173 Cal.App.4th at pp. 1123–1124, *In re S.O.* (2018) 24 Cal.App.5th 1094, 1098–1099.)

D.M. is instructive. As pertinent here, the question before the appellate court was whether a section 241.1 report was inadequate because the social worker allegedly prepared it unilaterally, without independent assessment by the probation officer of certain factors enumerated in 241.1. (*D.M.*, *supra*, 173 Cal.App.4th at p. 1123.) The court answered this question in the negative, noting in the first instance that it was "not persuaded a report was required under section 241.1," because the lower court "declined to make [the minor] a ward of the court, instead ordering only informal probation." (*Id*. at pp. 1123–1124.) Because the minor was not a ward when the juvenile court assumed dependency jurisdiction, "there was no basis for a section 241.1 report." (*Id*. at p. 1124, citing *Los Angeles County Dept. of Children & Fam. Services v. Superior Court* (2001) 87 Cal.App.4th 320, 325 ["Where the potential for dual jurisdiction arises because a second petition is filed regarding a minor already within the juvenile court's jurisdiction, the court presented with the second petition shall make the necessary determination"].) Similarly here, there is no indication Son was a ward of the court either when the dependency petition was filed or when the juvenile court ruled on it, and therefore we, like the court in *D.M.*, conclude the requirements of section 241.1 were not applicable.

In an attempt to avoid this conclusion, Mother argues that the record suggests that a new delinquency petition had been filed regarding Son after he stole a laptop and that it is "likely" he would have been placed on formal probation. As evidence, she points to the fact that he was arrested after that incident and stayed in Juvenile Hall for several days in late October 2019,

before being released to the Agency and returned to his emergency placement. But the same addendum report that set forth these facts *also* noted Son was on informal probation, and it made no mention of a further delinquency petition. Any conclusion that Son became a ward of the court, rather than continuing on informal probation without a declaration of wardship, is speculative and cannot support reversal of the juvenile court's order. Nothing we say, however, precludes Mother from raising the issue in further proceedings if the facts warrant it.

II. Conflict Between Oral and Written Orders

Mother asks us to reverse or strike various provisions of the January 15, 2020 written findings and orders because they conflict with the juvenile court's oral pronouncements.

At the conclusion of the jurisdictional and dispositional hearing, the juvenile court struck certain allegations, and the Department added interlineations to the then-operative first amended petition intended to reflect those changes and filed it as a second amended petition. Mother points out correctly that the second amended petition fails to reflect the court's action in striking the A1 allegation (§ 300, subd. (a)) that Son was at risk of serious physical harm inflicted non-accidentally. Although the minute order of the hearing indicates this allegation was stricken, we agree—and the Department concedes—that the matter should be remanded to the trial court to remedy this clerical error.

Mother's next challenge is to the service objectives in her case plan. The juvenile court struck the B1 allegation that Mother's ability to care for Minors was impeded by substance abuse, specifically marijuana and alcohol. Among the service objectives in the case plan was the following: "[Mother] agrees to refrain from further marijuana and alcohol us[e] and will test

weekly and randomly as a means of protecting the minors from the risk of further neglect and harm"; as bullet points under that service objective the case plan recited that Mother would ensure Minors were always supervised by a sober adult if she used or abused alcohol or marijuana, and that she would undergo urinalysis testing.

Mother contends this service objective is inappropriate because the juvenile court struck the substance abuse allegation. We are unpersuaded reversal is required on this ground. The service objectives are not orders of the court; rather, they are prepared to help the court ensure that planned services are designed to eliminate the conditions that led to the dependency. (*In re M.R.* (2020) 48 Cal.App.5th 412, 424.) Separately from the service objectives, the Agency recommended that Mother be required to participate in specified services to be considered for reunification: anger management, parenting education, individual therapy, and urinalysis testing and substance abuse assessment. At the January 15, 2020 hearing, Mother objected to the substance abuse testing and assessment requirements on the ground the court had stricken the substance abuse allegation, and the court declined to impose those requirements, ordering only parenting education and individual therapy with an emphasis on anger management. Thus, the service objective articulated by the Agency did not affect the services the juvenile court actually ordered.

Mother argues she might be prejudiced in the future by the continued mention of service objectives related to the stricken substance abuse count. Any such prejudice is speculative, and, in light of the court's refusal to order services related to substance abuse, tenuous. Nothing we say, however, is intended to prevent Mother from raising this issue as appropriate in future proceedings.

For similar reasons we reject Mother's argument that her second service objective must be stricken. That objective contemplates that Mother "agrees to ensure that over the next six months, that she maintains a healthy relationship with her children in order to ensure that they are not exposed to violence and conflict within the home." To that end, the objective's bullet points provide, Mother would agree to participate in individual therapy, in which she would address issues related to past trauma, co-parenting, and substance use and abuse; develop a safety plan to protect herself and her children from familial violence; and participate in a parenting education program that focuses on "teens, safety, age-appropriate communication and the effects of trauma and substance/alcohol use on children." Mother contends some of these matters—including those related to substance abuse—are unrelated to the findings that led to the dependency. But, as we have already explained, the services the court ordered included only parenting education and individual therapy with an emphasis on anger management, matters that fall within the ambit of the sustained allegations.

Mother also argues the minute order does not accurately reflect the juvenile court's order regarding parenting education. At the hearing, Mother's counsel argued that the anger management services recommended by the Agency as a separate requirement be incorporated into the individual therapy as "individual therapy focused on anger management." The court said, "Okay. So we'll have individual therapy with emphasis on anger management and parenting education. I'm striking the UA testing. I'll strike the anger management because I'm incorporating that into the individual therapy, okay?" Mother's counsel agreed. Mother now argues that the court's words indicate it intended the individual therapy to have a focus on parenting education as well as anger management, and that the written

order—which treats parenting education as one requirement and individual therapy with a focus on anger management as another—is inconsistent with the court's oral order. We disagree. It is clear from the colloquy that the court and all parties understood parenting education and individual therapy to be separate services, and the minute order accurately reflects the court's order.

III. Jurisdictional Findings

Mother asks us to reverse the jurisdictional findings, contending they are not supported by substantial evidence. Our standard of review is well settled. We determine whether the findings are supported by substantial evidence, contradicted or uncontradicted. (*In re I.J.* (2013) 56 Cal.4th 766, 773.) We draw all reasonable inferences to support the juvenile court's findings and orders, and we review the record in the light most favorable to these to determine whether the record contains substantial evidence such that a reasonable judge could have found the order appropriate. (*Ibid.*)

Moreover, " '[w]hen a dependency petition alleges multiple grounds for its assertion that a minor comes within the dependency court's jurisdiction, a reviewing court can affirm the juvenile court's finding of jurisdiction over the minor if any one of the statutory bases for jurisdiction that are enumerated in the petition is supported by substantial evidence. In such a case, the reviewing court need not consider whether any or all of the other alleged statutory grounds for jurisdiction are supported by the evidence.' " (*In re I.J.*, *supra*, 56 Cal.4th at p. 773.)

Subdivision (b) of section 300 authorizes dependency jurisdiction when a child "has suffered, or there is a substantial risk that the child will suffer, serious physical harm or illness, as a result of the *failure or inability of his or her parent or guardian to adequately supervise or protect the child*, or the

willful or negligent failure of the child's parent or guardian to adequately supervise or protect the child from the conduct of the custodian with whom the child has been left, or by the willful or negligent failure of the parent or guardian to provide the child with adequate food, clothing, shelter, or medical treatment, or by the *inability of the parent or guardian to provide regular care for the child due to the parent's or guardian's mental illness, developmental disability, or substance abuse*." (Italics added.)

The B2 allegation originally stated as follows: "The mother's ability to care for the children is impeded by *mental health and anger management issues* for which she requires a current assessment and treatment. The mother has been involved in three incidents of physical altercations with [Son]. On 09/05/2019, [Daughter], called the [social worker] to inform him that the mother has locked her in the bathroom because [Daughter] refused to give her check to the mother, and threatened to fight [Daughter]. Moreover, [Son's] probation officer stated that the mother gets explosive." (Capitalization omitted, italics added.) The juvenile court struck the words "mental health and," leaving only anger management issues in the italicized portion of the sustained allegation.

Mother contends the evidence does not support this allegation as sustained. She argues that the children neither suffered actual physical harm nor expressed fear that they would be harmed and that Daughter said she did not feel unsafe in the home. She treats the concern about anger management as a mere subjective perception on the part of the Agency, based on Mother's interactions with the social worker and other service providers rather than actual danger to the children.

Mother is correct that "[p]erceptions of risk, rather than actual evidence of risk, do not suffice as substantial evidence" (*In re James R.* (2009)

176 Cal.App.4th 129, 137 [no showing how minors would be harmed by mother's alleged substance abuse, and children were well cared for and never unsupervised]), and a " 'merely speculative' " risk of harm is insufficient to support jurisdictional findings (*In re Drake M.* (2012) 211 Cal.App.4th 754, 769).

The evidence that Minors are at substantial risk of harm is more than merely speculative here. The evidence is uncontradicted that Mother was involved in at least three physical altercations with Son, and that Daughter was involved in at least one of them. In one of them, Mother pushed Son against the wall so hard it caved in slightly. In another, Son pulled out a gun and threatened to shoot both Mother and Brother; by her own admission Mother told Son to go ahead and shoot her, and by Son's account, not only did Mother stand by as Brother pinned Son to the wall with his arm against Son's throat, but she directed her anger at Son, telling him something like, "that's what you get for being disrespectful," or "you disrespectful little B." In a third incident, Mother and Son struggled at the top of the stairs and Mother "went into a wall" while holding Son, causing it to cave in. Rather than acknowledging that her participation in these violent conflicts placed Son at risk of harm, Mother argues she acted in defense of herself and Daughter. She also minimizes the risk of a physical confrontation from the incident in which she confined Daughter to the bathroom and threatened to fight her if Daughter did not hand over her paycheck. Based on the evidence before it, the juvenile court could reasonably conclude Mother's inability to control her anger at her children and pattern of becoming involved in violent altercations placed them at risk of physical harm.

Mother also challenges the allegation that she needs "a current assessment and treatment" for anger management, on the ground she was

already receiving therapy as a result of Son's probation. But nothing in the record indicates she had adequately addressed the anger management issues that placed Minors at risk.

Mother argues the juvenile court abused its discretion in finding jurisdiction as to Daughter in order to allow her to continue receiving services as a non-minor dependent upon her upcoming eighteenth birthday. (See *In re Shannon M.* (2013) 221 Cal.App.4th 282, 284–285, 293–294.) We disagree. The record indicates the court wished to act expeditiously in advance of her birthday in order to preserve Daughter's rights to such services upon attaining her majority, but nothing suggests its factual findings were based on anything other than its evaluation of the evidence before it.

Mother argues that the B2 allegation was drafted to fall within the fourth clause of section 300, subdivision (b) (authorizing jurisdiction based on the parent's inability to provide medical care based on mental illness, developmental disability, or substance abuse), and argues that anger management issues do not fall within the scope of this clause. Whether or not that is the case, we conclude the sustained allegation falls within the first clause (the parent's inability to adequately supervise or protect a child), and the evidence adequately supports the juvenile court's findings.

Having concluded jurisdiction over both children was proper under the B2 allegation, we need not consider Mother's separate challenges to the other grounds for jurisdiction. (*In re I.J.*, *supra*, 56 Cal.4th at p. 773.)

IV. Dispositional Orders

Mother challenges the dispositional order removing Minors from her home, contending it is not supported by substantial evidence.

A child may not be removed from a parent's physical custody during dependency proceedings "unless clear and convincing evidence supports a

ground for removal specified by the Legislature," and generally there must be a finding that there are no other reasonable means of protecting the child. (*In re Henry V.* (2004) 119 Cal.App.4th 522, 525; § 361, subd. (c).) The juvenile court here found there would be a substantial danger to Minors' physical health if they were returned home, and there were no reasonable means to protect them without removing them from Mother's physical custody.

In reviewing a finding made by clear and convincing evidence, "the question before the appellate court is whether the record as a whole contains substantial evidence from which a reasonable fact finder could have found it highly probable that the fact was true." (*Conservatorship of O.B.* (2020) 9 Cal.5th 989, 995–996.) We view the record in the light most favorable to the finding and "give due deference to how the trier of fact may have evaluated the credibility of witnesses, resolved conflicts in the evidence, and drawn reasonable inferences from the evidence." (*Id.* at p. 996.)

The evidence here meets this standard. It is undisputed that there had been a number of incidents of physical violence involving Mother, Son, and Daughter, during two of which walls were damaged and during one of which Son pulled out a BB gun and threatened Mother and Brother after Mother tolerated or even encouraged Brother's violence against Son. Although it appears Mother was receiving services through Son's probation, the record shows she refused all services the Department offered, and indeed, that she refused to discuss the case with the social worker. She failed to attend one CFT meeting, and she walked out of another. Son was inconsistent about whether he wished to return home to Mother, Daughter did not wish to do so, and Mother had expressed concern about her ability to care for them safely. On this record, the juvenile court could reasonably conclude Mother was not

addressing the family's pattern of violence in a way that would allow Minors to be returned to her safely at this time.

Mother argues, however, that the juvenile court had options available that would allow a safe return, such as requiring unannounced home visits. (See, e.g., *In re Ashly F.* (2014) 225 Cal.App.4th 803, 810 [juvenile court should have considered unannounced visits, public health services, and in-home counseling where mother had expressed remorse for injuring child and had enrolled in parenting class, and father had completed parenting class]; *In re Henry V.*, *supra*, 119 Cal.App.4th at p. 529 [removal inappropriate where there had been only single incident of physical abuse and concerns about safety and lack of bonding could be addressed with in-home bonding services and unannounced visits].) She does not explain, however, how unannounced visits would prevent the instances of apparently unpredictable violence that disturbed the household, particularly in light of her refusal to engage with the Agency and allow them to assist her in addressing the problems that beset the family.

Mother also points to evidence that in some ways she was a good parent, and we agree with her on this point as far as it goes. The fact that the social worker described both children as "very mannerable" and Daughter as "sweet," speaks well for how she raised them. And she may have been a conscientious parent in visiting Daughter's school and the Agency on several occasions. But these efforts do not undermine a finding that repeated violence in the household endangered Minors' safety.

We thus conclude the evidence is sufficient to support the dispositional order removing Minors from Mother's care.

V. ICWA Compliance

Mother contends, and the Agency concedes, that the juvenile court committed error under ICWA, which provides that, when the court knows or has reason to know that an Indian child is involved, it may not hold a foster care placement proceeding until at least ten days after notice of the proceeding has been provided to the Indian child's tribe or the Bureau of Indian Affairs. (25 U.S.C. § 1912(a).) Mother asks us to reverse the removal order on this ground.

Mother reported that her great-grandmother was a Choctaw or Apache from Arizona, and on September 30, 2019, the juvenile court found ICWA might apply. A December 9, 2019 addendum report noted that Mother might have Indian ancestry, but did not indicate a date on which notice had been sent to the tribes. Another addendum report, filed January 2, 2020, noted that ICWA inquiry was pending and said the date notice sent was "unk[nown]." At the January 15, 2020 jurisdiction/disposition hearing, the Agency acknowledged it had not received back the ICWA notices. The court made the jurisdictional and dispositional findings we have discussed above and set a hearing for March 16 for an update on ICWA.

The Agency concedes the juvenile court erred in holding the dispositional hearing when it did not appear ten days had elapsed since ICWA notice had been sent to the tribes. But, the Agency argues, the question of ICWA compliance is now moot because the juvenile court has since found that ICWA does not apply. In support of this contention, the Agency requests judicial notice of July 30, 2020 orders of the juvenile court—several months after the orders on appeal here—finding that, based on the ICWA forms completed by Father and Mother, ICWA did not apply and

ICWA inquiry had been satisfied.[4] The agency relies on *In re Karen G.* (2004) 121 Cal.App.4th 1384, 1390, which notes an appellate court may take judicial notice of subsequent proceedings in the juvenile court to find an appeal has been rendered moot, and *In re D.N.* (2013) 218 Cal.App.4th 1246, 1251, which explains that "[d]eficiencies in ICWA inquiry and notice may be deemed harmless error when, even if proper notice had been given, the child would not have been found to be an Indian child." (See *In re E.W.* (2009) 170 Cal.App.4th 396, 401–402 [declining to reverse for inadequate ICWA notice where there was no doubt tribes would respond to ICWA notices regarding one child with same information they had provided for child's sibling].)

The problem with the Agency's argument is that we have before us only the trial court's ruling on the issue of ICWA notice, rather than the documents underlying the ruling. And, as Mother points out in her opposition, she has appealed the July 30, 2020 orders. (*San Francisco Human Services v. T.R.* (A160797, app. pending).)[5] In the circumstances, we are unable to declare harmless any error in failing to comply with ICWA in advance of the dispositional hearing. Instead, we shall conditionally reverse the order as to disposition and order a limited remand for the juvenile court to hold a hearing to determine whether any further action pursuant to ICWA is necessary. (*In re Francisco W.* (2006) 139 Cal.App.4th 695, 711.) If the court determines that ICWA's requirements have been satisfied, the dispositional order shall be reinstated.

VI. Delegation of Authority over Visitation

Mother's final contention is that the juvenile court improperly delegated to Minors whether she would visit with them and failed to specify

---

[4] We grant the request for judicial notice.

[5] The appellant's opening brief in that appeal is yet to be filed.

the frequency and length of visits. We conclude she waived this argument by agreeing to the juvenile court's ruling.

As background, at a hearing on December 9, 2019, the juvenile court ordered supervised visitation, provided Mother and Minors were willing. The court asked Mother's view, and her counsel replied, "That's an acceptable arrangement for visitation."

At the conclusion of the January 15, 2020 jurisdictional and dispositional hearing, a discussion of visitation took place. The court asked how the parties wanted visits to be handled, and Mother's counsel said, "My understanding is that visitation is unsupervised and that it would be by contacting—the children contacting the mom." Daughter's counsel indicated that Daughter did not wish to have visits with Mother at that time, and the court noted that Daughter was on the verge of turning 18. The court asked about Son. Mother's counsel told the court Mother would need transportation to meet with Son, and the court asked what Son wanted. The social worker said Son wanted to visit every other weekend, and Son's counsel said Son wanted unsupervised visits at a public location. The court said the Agency would have to make arrangements for Mother to visit. Mother was present and raised no objection.

Mother contends the juvenile court improperly delegated to Minors whether visits would occur. Mother is correct that visits are a necessary component to a visitation plan, and the power to decide whether *any* visitation occurs belongs to the court alone and may not be delegated to the social worker, therapist, or child. (See *In re S.H.* (2003) 111 Cal.App.4th 310, 317-318; see also *In re Brittany C.* (2011) 191 Cal.App.4th 1343, 1358 [child may be allowed to refuse particular visit as long as there is some assurance

another visit will take place].) But, even assuming the court's ruling violated this precept, Mother has waived any objection.

The rule of forfeiture, under which " '[a] party forfeits the right to claim error as grounds for reversal on appeal when he or she fails to raise the objection in the trial court . . . applies in juvenile dependency litigation,' " including the question of whether a juvenile court improperly delegated its visitation authority. (*Kevin R. v. Superior Court* (2010) 191 Cal.App.4th 676, 686; see *In re Valerie A.* (2007) 152 Cal.App.4th 987, 1001 [mother forfeited objection to visitation orders by not objecting below].) Here, Mother expressly acquiesced to the court's December 9, 2019 order for supervised visits. And, as to the dispositional order, not only did Mother fail to object to the unsupervised visitation arrangement the court ordered, her counsel expressly proposed that visits occur when the children contacted Mother. She may not now raise any objection to the visitation orders.

We recognize that, rather than reflecting this discussion, the minute order stated visitation would take place "[a]s previously ordered," presumably referring to the December 9, 2019 ruling ordering *supervised*, rather than unsupervised, visitation provided Mother and Minors were willing. To the extent there is a conflict between the minute order and the court's oral ruling, the oral ruling prevails. (*Jennifer T. v. Superior Court* (2007) 159 Cal.App.4th 254, 259.) Because of the discrepancy, and in order to avoid any confusion in the future, we shall direct the juvenile court on remand to correct the minute order to reflect its January 15, 2020 ruling authorizing unsupervised visitation.

DISPOSITION

The January 15, 2020 order is affirmed as to jurisdiction. However, the juvenile court is directed to correct the record to reflect its action in striking the allegation under section 300, subdivision (a).

Solely as to disposition, the January 15, 2020 order is conditionally reversed and the case is remanded to the juvenile court with directions to hold a hearing to determine whether any further action pursuant to ICWA is necessary. If the court determines that ICWA's requirements have been satisfied, the order shall be reinstated. The juvenile court is further directed to correct the minute order of the January 15, 2020 hearing to reflect its visitation order. In all other respects, the orders are affirmed.

TUCHER, J.

WE CONCUR:

STREETER, Acting P. J.
BROWN, J.